

**From:** James Burton  
**To:** ["josh@nelsonjoneslegal.com"](mailto:josh@nelsonjoneslegal.com)  
**Cc:** [Joshua S. Rupp](#); [Heather Mills](#)  
**Subject:** RE: Green v. Standard Extension Request  
**Date:** Wednesday, December 27, 2017 12:05:38 PM

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Josh:

I'll be happy to articulate the prejudice to Standard. It's that the Greens have systematically engaged in a pattern of delay and obfuscation throughout the duration of this case. With almost every deadline of consequence, the Greens' counsel has either requested an extension in advance, missed their deadline, or filed a request for an extension at the very last minute (oftentimes at literally 11:59 pm). When you extrapolate that approach over four years of litigation, it adds up to substantial prejudice. I think you can agree that I have been reasonable in giving you extensions since Marcus left the case and you assumed the role of lead counsel. I've certainly tried, and it has happened on several occasions. This, however, is different as this is a court-ordered deadline. Moreover, your choice to prioritize other matters and issues over this is a problem for which we do not have the solution.

As to your disagreement with the concerns I raised, we cannot force you to articulate reasons why you think an extension is appropriate when based upon many of the same issues already presented to Judge Furse.

I hope you'll reconsider and accept our compromise of filing your opposition tomorrow.

Proceed as you feel is appropriate.

Thanks,

James

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**From:** [josh@nelsonjoneslegal.com](mailto:josh@nelsonjoneslegal.com) [mailto:[josh@nelsonjoneslegal.com](mailto:josh@nelsonjoneslegal.com)]  
**Sent:** Wednesday, December 27, 2017 11:45 AM  
**To:** James Burton  
**Cc:** [Joshua S. Rupp](#); [Heather Mills](#)  
**Subject:** RE: Green v. Standard Extension Request

James,

There shouldn't be a struggle for an extension of 3 business days, especially when the Utah Standards of Professionalism and Civility state: "Lawyers shall agree to reasonable requests for extension of time and waiver of procedural formalities when doing so will not adversely affect their clients' legitimate rights." Absent from your email is an explanation of how your client will be prejudiced or its legitimate rights affected by stipulating to the requested extension.

With respect to the “issues” you raise, I disagree with all of them, but I’m not going to argue them with you here because we both know your position isn’t going to change. I’ll proceed to file a motion. In the meantime, I hope you’ll reconsider your opposition, especially where it is not based on any adverse effect to your client’s legitimate rights.

Thanks,

Joshua S. Ostler  
Nelson Jones, PLLC  
8941 S. 700 E., Ste. 203  
Sandy, Utah 84070  
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**From:** James Burton [<mailto:jbarton@kmclaw.com>]  
**Sent:** Wednesday, December 27, 2017 11:26 AM  
**To:** 'Joshua Ostler' <[josh@nelsonjoneslegal.com](mailto:josh@nelsonjoneslegal.com)>  
**Cc:** Joshua S. Rupp <[jrupp@kmclaw.com](mailto:jrupp@kmclaw.com)>; Heather Mills <[hmills@kmclaw.com](mailto:hmills@kmclaw.com)>  
**Subject:** RE: Green v. Standard Extension Request

Josh:

We are really struggling with this for several reasons. First, many of the concerns you stated below were previously presented by you to Judge Furse when she specifically set today as the deadline for your opposition. Your concerns and reasons for an extension appear to be no more compelling now than they were at the time you presented them to the Court.

Second, your request for additional time is made the day of your deadline. This, unfortunately, has been a regular occurrence by the Green’s counsel in this matter. While we are sensitive to and appreciate a heavy case load, you clearly were aware of these other issues long before today yet chose to only raise them today. You have also been aware of today’s deadline since the Court set it on December 1. A three-week extension of the original deadline is, in our estimation, more than sufficient.

Third, your attempts to distance your previous involvement from Marcus’ is not convincing as you were heavily involved in the case even before Marcus withdrew. Moreover, we struggle to understand what coordination with Marcus is necessary on this particular motion. Likewise, an inability to reach Marcus should not be a basis to extend the deadline given Marcus’ track-record of being unresponsive in this case.

Fourth, and most importantly, this is a court order you are looking to supersede. While we struggle with the merit of your request, we more importantly don't believe that we are in a position to ignore Judge Furse's order setting today as the deadline. Where this is a court order, we believe you would need to seek reconsideration of Dkt. No. 538 in order to obtain the relief you are seeking here.

In an attempt to work with you on this and avoid judicial intervention, we will not raise any issue with the timeliness of your opposition if it is filed by tomorrow, December 28, 2017. Any filing after that date, however, will be objected to by Standard.

Thanks,

James

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James T. Burton

**Kirton McConkie**

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**From:** Joshua Ostler [<mailto:josh@nelsonjoneslegal.com>]

**Sent:** Wednesday, December 27, 2017 10:39 AM

**To:** James Burton

**Cc:** Joshua S. Rupp; Heather Mills

**Subject:** Re: Green v. Standard Extension Request

James,

I've had engagement in other litigation, including a criminal trial that was scheduled for December 13-15 and a response related to a motion to dismiss in a civil case that was due on December 20th.

In addition to that, there are several matters in this case separate and apart from the motion for attorney fees, including other motions and discovery issues that have required significant time and attention.

With respect to the motion for attorney fees itself, you are seeking fees for matters that were handled by the Greens' prior counsel and not by me. I've been trying to coordinate with prior counsel, but our schedules have not lined up due primarily to family and personal obligations related to the holidays.

There may be some other reasons I've overlooked, but I think the foregoing is more than enough to show good cause for an extension until the day after New Years. Hoping you'll stipulate and we can avoid unnecessary motion practice.

Thanks,

Josh

On Dec 27, 2017, at 10:07 AM, James Burton <[jbarton@kmclaw.com](mailto:jbarton@kmclaw.com)> wrote:

Josh:

Can you explain the need for additional time? As you know, you originally asked for more time and Judge Furse set today as the date the opposition is due.

Thanks,

James Burton

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**From:** Joshua Ostler [<mailto:josh@nelsonjoneslegal.com>]

**Sent:** Wednesday, December 27, 2017 10:03 AM

**To:** James Burton; Joshua S. Rupp

**Subject:** Green v. Standard Extension Request

James,

I'm going to need some additional time to finish the response to Standard's motion for attorneys fees that's due today. Would you be willing to give us until next Tuesday, January 2nd? If so, I can send over a draft stipulated motion. Or I can make an "unopposed motion." Let me know.

Thanks,

Joshua S. Ostler

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